

MEMORANDUM

Staff Summary No. 7

Date: July 11, 2018

To: Members of the California School Finance Authority

From: Katrina M. Johantgen, Executive Director

Re: Resolution 18-13 – Approving Amendments to Regulations for the Charter School Facility Grant Program and Authorizing the Permanent Rulemaking Process

Emergency Regulations (ER) under the Charter School Facility Grant Program (SB740 or Program) were approved at the October 11, 2017 California School Finance Authority (Authority) Board Meeting, and approved by the Office of Administrative Law (OAL) on November 2, 2017. The ER contained the pro-rata methodology necessary to administer the Program due to oversubscription.

On December 12, 2017, the Proposed Permanent Regulations (PPR) were approved by the Board and submitted to OAL as the beginning of the Regular Rulemaking process. A Notice of Proposed Rulemaking opened the 45-day Public Comment period which closed on February 20, 2018. The Authority received several public comments on the PPR concerning Section 10170.4 (a)(1). This subsection included two facility cost limiters which capped annual rent increases for existing leases, and required new facility agreements to be capped at a fair market rate, as determined by an Independent Appraisal.

During the same time frame, the Department of Finance (DOF) introduced Trailer Bill Language (TBL), which did not agree with PPR Section 10170.4 (a)(1). Therefore, at its March 14, 2018 meeting, the Board approved to readopt the ER readopt with the addition of the language from the PPR, but excluded Section 10170.4 (a)(1).

The Governor's recent approval of the 2018-19 Budget included modifications to the Program. This staff summary addresses the additional changes proposed since approval of the Emergency Rulemaking Action. In the attached text of regulations, Authority staff has identified additional changes using a purple font to distinguish new changes from the previously approved Emergency Regulation language.

Approval of the permanent rulemaking file will convert the emergency regulations to permanent, and also implement the modifications made to the Program in the 2018-19 Governor's Budget. The Authority intends to proceed with the Regular Rulemaking Action and Certificate of Compliance upon the Authority Board's approval of the following proposed amended permanent regulations:

Section 10170.2 Definitions

Section 10170.2 (k), (r), and (s) – Amendments to this section set forth definitions of key terms used in the Education Code 47614.5 and regulations adding a new definition for "Fair

Market Rent,” “Independent Appraisal,” and “New Facility Agreement.” These amendments are necessary as they provide clarification on how the Authority will determine eligible facility costs. The new definitions expanded the index to end with the letter (t).

Section 10170.4. Eligible Cost

Section 10170.4(f)(1)(B) and C – Updated references.

Section 10170.4. Eligible Cost

Section 10170.4(a)(1) – The amendment “beginning with the 2017-18 funding round” was added to comply with updates made to Education Code 47614.5(d)(3) which established the additional facility cost caps described below.

Section 10170.4(a)(1)(A) – The amendment was added to comply with updates made to Education Code 47614.5(d)(3)(i) which requires eligible facility costs for lease agreements on file with the Authority to be capped with 2016-17 rent and lease costs as adjusted by the annual Cost of Living Allowance (COLA Index)

Section 10170.4(a)(1)(A)(i) – The amendment was added to provide clarification on how to Authority will calculate each Applicant’s eligible lease costs to be adjusted by the annual COLA Index. “The Authority shall adjust the end of the prior year’s monthly rate by the annual COLA index” is the proposed text.

Section 10170.4(a)(1)(B) – The amendment was added to comply with updates made to Education Code 47614.5(d)(3)(ii) which requires eligible lease costs for New Facility Agreements to be capped at fair market rate as determined by an Independent Appraisal.

Section 10170.4(a)(1)(B)(i) – The amendment was added to clarify the portion of facility that will require an Independent Appraisal if the New Facility Agreements only increases the square footage of the charter school’s current site.

Section 10170.4(1)(B)(ii) – The amendment was added to explain how the Authority will calculate the applicant’s eligible facility if the Independent Appraisal finds the lease costs above the fair market rent. Additionally this amendment establishes that applicants will not be found ineligible based on the Independent Appraisal findings, instead the applicant’s facility costs will be capped at fair market rate.

Section 10170.4(a)(2) – The amendment was added to comply with updates made to Education Code 47614.5(f) which states rent and lease costs will be awarded first.

Section 10170.4(d) – The subsections “(a)(3) and (a)(4)” were added in order to be consistent with Section 10170.4(a).

Section 10170.6. Content of Application

Section 10170.6(d) – The subsection has been added to clarify the required content of an Independent Appraisal. The new subsection expanded the index to end with the letter (g).

Section 10170.7. Estimated Annual Entitlement Calculation

Section 10170.7(f) – Updated reference.

Section 10170.8. Final Fiscal Year Entitlement Calculation

Section 10170.8(c) – Updated references.

Section 10170.9. Apportionment of Grant Funds

Section 10170.9 (a) – The subsection has been removed to comply with amendments made to Education Code 47614.5(i) which removed language that required the Program to use the current appropriation to reimburse prior year awardee’s unreimbursed rent or lease costs.

Section 10170.9 (b) – The subsection has been amended to comply with amendments made to Education Code 47614.5(i) and (c)(4)(A). The Estimated Annual Entitlement (initial apportionment) is now due to each grantee by October 31 of the Fiscal Year.

Section 10170.9(d) and (e) – These amendments were added to comply with a change made to Education Code 47614.5(f) which states rent and lease costs will be awarded first.

Section 10170.9(e)(1) and (e)(1)(A) – The amendment was added to comply with updates made to Education Code 47614.5(f) and to clarify how the Authority will calculate each grantee’s eligible other costs (facility costs other than rent and lease costs) if the funding round is oversubscribed.

Section 10170.9(e)(1)(A) – The amendment was added to comply with amendments made to Education Code 47614.5(f) and clarify that other costs are ineligible for reimbursement if the Program has insufficient funds to fully award each grantee’s lease and rent costs. An award calculation was provided for the grantee.

Section 10170.9(e)(2) – The amendment was added to comply with amendments made to Education Code 47614.5(f) if insufficient funds remain available from the Fiscal Year’s appropriation rent and lease costs will only be awarded.

Section 10170.9(e)(5) – The amendment removed the word “revised” the CSFA Form 740-03 is a new form dated October 2017.

Section 10170.9(g) – Typographic correction. The new subsections expanded the index to end with the letter (h).

10170.14. Conflicts of Interest

Section 10170.14(c)(4) – The subsection was amended to conform to amendments made to Education Code 47614.5 and Section 10170.4(a)(1)(B). The Authority will only accept Fair Market Rent and no longer accept lease or rent agreements deemed reasonable by the governing board.

Recommendation: Authority staff recommends the Board adopt Resolution 18-13 approving the amended permanent regulations for the administration of the Charter School Facility Grant Program. If approved, the Executive Director will include the Resolution demonstrating the Board approval with the permanent rulemaking file.